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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

HOLY HILL COMMUNITY CHURCH, Plaintiff and Appellant, v. MYUNG KYUN KIM et al., Defendants and Respondents.	B207864 (Los Angeles County Super. Ct. No. BC321267)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mary Thornton House, Judge. Affirmed.

Silvio Nardoni; Kent M. Bridwell for Plaintiff and Appellant.

Loeb & Loeb, Andrew S. Clare, David Grossman and Anne W. Braveman for Defendants and Respondents.

Plaintiff Holy Hill Community Church (the Church) owns a parcel of property on which stands, among other things, the church sanctuary, administrative buildings, a 7-story tower or office building, and a parking lot. At some point, the Church decided to sell the tower. It subdivided, by means of an "air space" subdivision, only the tower itself into its own lot. The City would not approve the subdivision without a guarantee that the tower parcel – despite not including any of the land on the property – would have sufficient parking. The City required 178 parking spaces for the tower. In order to appease the City, the Church and the tower buyers entered into a Reciprocal Use Agreement (RUA), governing the parking on the Church's property. The RUA stated, in pertinent part, "Church, the owner of Parcel B, [the remaining Church property] and [the tower buyers] hereby agree to the reciprocal use of 178 parking spaces, the required parking spaces by the City of LA for Parcel A [the tower], so that if Church requires additional parking spaces for one of its functions or events, Church may have use of the available parking spaces belonging to Parcel A, provided that Church gives ten (10) days advance notice to [the tower buyers] or its agent/facility operator. For such parking utilization, there shall be no additional cost to Church."

The tower was ultimately resold by the original tower buyers to Simi Valley Shopping Center, L.P. (tower owner), and a dispute arose regarding parking rights. Specifically, tower owner contended that it had the exclusive right to use 178 spaces on the property, with the Church permitted to use the spaces tower owner was not using on ten days' notice for special events. In contrast, the Church contended that all 178 spaces were to be shared between the Church and the tower on a first-come,

first-served basis, with the Church able to use *all* 178 spaces for special events on ten days' notice. A bench trial was held and the trial court adopted the tower owner's interpretation. The Church appeals, arguing that the trial court erred in failing to consider extrinsic evidence it had offered regarding the circumstances of the execution of the RUA. We reject that argument and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The relevant factual history is straightforward and largely undisputed. The property in question was formerly used by the Metropolitan Water District (MWD) as its headquarters. It is undisputed that there is insufficient parking on the property itself to support all of the buildings on the property.[1] During the MWD's ownership, an additional parking garage, nearby but off-site, was used to provide additional parking (MWD garage). Rights to park in the MWD garage run with the land; when the Church obtained title to the property, it also obtained rights to park in the MWD garage. It is apparent, however, that off-site parking in the MWD garage is less desirable than parking on the property, both for members of the Church and users of the tower.

In 1998, the Church, which is managed by a Board of Elders, considered developing the tower.[2] The Church was particularly interested in selling or leasing the

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[1] The actual number of parking spots on the property is not clear, although it is some amount between 100 and 200. The evidence is undisputed that the property can be re-striped to provide as many as 215 parking spaces.

[2] This may have been simultaneous to the Church's decision to build a sanctuary on the property. Apparently, the Zoning Administrator approved a conditional use permit for a 1,500 square foot sanctuary to be built in 1998. Although no details exist in

tower to someone who would develop it into senior assisted living. Among other reasons for preferring this plan was the Church's understanding that an assisted living facility would require minimal parking spaces, perhaps only 50 to 70. The Church initially planned to sell the tower to a group known as Holy Hill Village, although the tower was instead sold to one of the principals in that group, De Young Kim, and his wife (the tower buyers).

In order to effectuate the sale, the Church subdivided the property into Parcel A, the tower itself, and Parcel B, the remainder of the property. City zoning requirements mandated 2 parking spots be provided for every 1000 square feet of office space. As the tower encompassed nearly 90,000 square feet, 178 parking spaces were required. The City would not approve the subdivision without a guarantee that the tower had 178 parking spaces. The RUA, dated September 28, 2001 and recorded October 9, 2001, was executed in order to satisfy this requirement.[3]

As stated above, the RUA provided, "Church, the owner of Parcel B, and [the tower buyers] hereby agree to the reciprocal use of 178 parking spaces, the required parking spaces by the City of LA for Parcel A, so that if Church requires additional parking spaces for one of its functions or events, Church may have use of the available parking spaces belonging to Parcel A, provided that Church gives ten (10) days advance

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the record, that conditional use permit apparently included its own parking requirements.

[3] The subdivision map was filed by the Church on August 30, 2001, predating the RUA by approximately one month. Nonetheless, the witnesses agreed that the RUA was drafted to meet the city's requirements. Indeed, an earlier version of the RUA had been prepared as early as April 2001.

notice to [tower buyers] or its agent/facility operator. For such parking utilization, there shall be no additional cost to Church." The RUA also contained clauses indicating that: (1) it runs with the land and binds/benefits successors, assigns, and transferees; (2) it is the entire agreement and supercedes all prior oral or written agreements on the subject matter; and (3) should any dispute arise concerning the agreement, the prevailing party is entitled to reasonable attorney's fees.

The tower buyers did not develop the planned senior assisted living facility. Instead, in 2002, they sold the tower to tower owner. Tower owner has not yet developed the tower, although tower owner is considering several different possible uses for the tower. In 2004, tower owner sought permission from the local Zoning Administrator to convert the tower into "71 live/work units." Permission was denied, but the East Los Angeles Area Planning Commission overturned the action of the Zoning Administrator and permitted the use. Apparently, tower owner had first sought approval for a plan which would provide the 71 proposed live/work units with 71 parking spaces on the site of the property, in reliance on the RUA. However, as litigation was anticipated regarding the validity of the RUA, the spaces identified therein could not be guaranteed for the tower. Tower owner then indicated to the Planning Commission that it could transform the tower basement into 31 parking spaces under its complete control, but this was not sufficient to meet the minimum requirement "of at least one parking space [to] be provided for every unit for the consistent and

reliable use of the residents of the 71 live/work quarters."[4] When tower owner appealed to the planning commission, it offered to provide a total of 107 spaces, some to be located off-site (presumably in the MWD garage). This was approved.

Shortly before this decision by the Planning Commission, the Church brought the instant action against, among others, the tower owner and the tower buyers. The Church challenged the validity of the sale, and sought to quiet title to the property.[5] Tower owner filed a cross-complaint, seeking to quiet title to the tower, and declaratory relief regarding its right to the parking spaces. The Church then dismissed its action against tower owner without prejudice. Tower owner's declaratory relief cause of action was bifurcated, and proceeded to a bench trial.[6]

At trial, tower owner argued that the RUA was not ambiguous and granted it the right to use 178 parking spaces on the property. Counsel characterized its right to those

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[4] It does not escape our notice that tower owner had sought approval for a use requiring only 71 spaces – a number quite similar to the 50 to 70 spaces which would have been required by the proposed senior assisted living facility. Nonetheless, the Church chose to dispute the validity of the RUA rather than agree that the tower owner had exclusive use of the necessary 71 spaces (or 40, after the tower owner indicated it could supply 31 spaces itself).

[5] Although tower owner was initially named as a defendant in the Church's complaint, tower owner was not identified as a defendant in any of the causes of action alleged. Church ultimately filed a first amended complaint which named tower owner in a cause of action for conspiracy to commit fraudulent conveyance.

[6] The record does not reflect the disposition of the tower owner's quiet title cause of action. Apparently, although the Church believes the original sale to the tower buyers was an act in excess of the authority of its former officers, it does not suggest that tower owner had actual knowledge of that lack of authority. Thus, it apparently does not challenge tower owner's ownership of the tower. Tower owner agrees that it is no longer involved in the ongoing litigation.

spaces as "first dibs." Tower owner introduced the testimony of one of the tower buyers, to the effect that he had understood the RUA to grant the tower the right to use 178 spaces if needed, with the Church able to use the remaining spaces if they were available and the Church asked to do so. Tower owner also relied on the deposition testimony of the Church Elder who had signed the RUA on behalf of Church. He stated that he had understood the RUA to mean "that the tower has the right to use of the parking space, spaces in order to close the sale of the building, of the tower." Tower owner also testified, explaining that, even if the tower is developed for a use that does not require all 178 parking spaces, the spaces have to be available to the tower in order for the building to maintain its value and comply with future uses. He testified to his understanding that when the City requires spaces to be made available to users of a building, those spaces must be available at all times, not on a first-come, first-served basis. However, tower owner testified that if the tower is developed into live/work units or another use which does not require the full 178 spaces, the Church would be able to use the remaining parking spaces.

In contrast, the Church took the position that it owned all of parking spaces on the property, but that it was required to share 178 spaces with the tower on a first-come, first-served basis. The Church argued that the RUA provided that it could have exclusive use of *all parking spaces* on the property on ten days' notice. Moreover, the Church argued that the parties to the RUA had not intended to provide the tower with even shared use of the full 178 spaces, but only the shared use of the 60 or 70 spaces anticipated to be used by a senior assisted living facility. In short, the Church took the

position that the RUA "was to provide the minimum amount of parking that the tower needed to obtain the use permits for its development," and that this parking was to be on a shared basis. The Church relied on evidence that, when Holy Hill Village was the intended buyer of the tower, Holy Hill Village represented to the Church that the proposed assisted living facility would require 50 to 70 parking spaces only, and that the 178 number had been written into the RUA because that was what the City had required. The Church offered the testimony of its Elders that they had never intended to give up all of the Church's on-site parking. The Church also introduced expert testimony regarding the RUA. The expert testified that the RUA is an inadequate document, and suggested that any experienced developer would question it, given that it neither divides up the specific parking spaces between the Church and tower, nor "if it's shared parking, [explain] how is the shared parking going to be regulated and enforced." The expert opined that the "nature of the property dictates that there be joint usage. One party . . . having control over all of the spaces on the hill is going to destroy the economic utility of the access and, for that matter, the practicality of the other party." The expert believed the RUA to be ambiguous, but interpreted it to provide parking on a first-come, first-served basis, which he believed to be a potentially workable, but unsatisfactory, plan.

The trial court issued a statement of decision concluding that the tower owner has the exclusive right to use 178 spaces on the property, while the Church has the right to use available spaces from time to time for specific functions and events on ten days' notice. The court concluded that the RUA had been devised and executed to meet the

City's requirements for the subdivision. The court noted that the Church relied on extrinsic evidence that the intent of the parties was that the parking spaces be shared with an assisted living facility on a first-come, first-served basis, but rejected that evidence on the basis that the language of the RUA is not ambiguous. The court further concluded that the Church's "first-come, first-served" interpretation is contrary to City zoning requirements and the requirements of the subdivision; the court refused to interpret the agreement in such a way as to "nullify the City's parking requirements and violate the terms of the conditions that permitted the subdivision of the parcel to occur." Judgment was entered accordingly, and tower owner was awarded its fees as the prevailing party on the contract. The Church filed a timely notice of appeal.[7]

ARGUMENTS ON APPEAL

At trial, the Church offered substantial parol evidence in support of its interpretation of the RUA – that is, that the RUA provided for first-come, first-served parking and that the Church could use all of the parking on 10 days' notice. On appeal, the Church argues that the trial court erred in failing to consider its parol evidence. However, the Church no longer argues that the trial court should have considered its parol evidence in support of its interpretation of the contract. Instead, the Church argues that the trial court should have considered the parol evidence to conclude that the RUA is so ambiguous as to be unenforceable, and that this court should, in the first instance, conclude the RUA is void. In the alternative, the Church argues that we

[7] At oral argument, this court strongly advised that the parties attempt to negotiate a settlement. After argument, the parties met with a mediator from a court-approved mediation program. The mediation failed to reach a settlement.

should remand to the trial court with directions that the trial court consider the Church's extrinsic evidence, and that the trial court consider reforming the contract to meet the parties' expectations.[8]

DISCUSSION

1. *The Court Did Not Err in Refusing to Consider the Church's Parol Evidence*

When the terms of a contract are uncertain or ambiguous, extrinsic evidence may be used to aid in contract interpretation. (*See Schmidt v. Macco Const. Co.* (1953) 119 Cal.App.2d 717, 730.) "[The parol evidence] rule, presently codified in Code of Civil Procedure section 1856[,] precludes evidence of a prior agreement or of a contemporaneous oral agreement to contradict terms included in a written instrument which the parties intend as the final expression of their agreement, but it does not exclude 'other evidence of the circumstances under which the agreement was made or to which it relates . . . or to explain an extrinsic ambiguity or otherwise interpret the terms of the agreement . . . . ' (Code Civ. Proc., § 1856, subd. (g).)" (*Garcia, v. Truck Ins. Exchange* (1984) 36 Cal.3d 426, 435.) "The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably

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[8] At trial, tower owner asked the trial court to reform the agreement; the Church sought no such relief. On appeal, the Church concedes that its failure to request reformation of the agreement bars it from arguing on appeal that the court erred in failing to reform the contract. However, the Church contends it would seek reformation on remand, and asks this court to set forth the trial court's authority to reform the contract.

susceptible. [Citations.] [¶] A rule that would limit the determination of the meaning of a written instrument to its four-corners merely because it seems to the court to be clear and unambiguous, would either deny the relevance of the intention of the parties or presuppose a degree of verbal precision and stability our language has not attained." (*Pacific Gas & Elec. Co. v. G.W. Thomas Drayage & Rigging Co., Inc.* (1968) 69 Cal.2d 33, 37 (*Pacific Gas*).)

"Although extrinsic evidence is not admissible to add to, detract from, or vary the terms of a written contract, these terms must first be determined before it can be decided whether or not extrinsic evidence is being offered for a prohibited purpose. The fact that the terms of an instrument appear clear to a judge does not preclude the possibility that the parties chose the language of the instrument to express different terms." (*Pacific Gas, supra*, at p. 39.) "Accordingly, rational interpretation requires at least a *preliminary consideration* of all credible evidence offered to prove the intention of the parties. [Citations.] Such evidence includes testimony as to the 'circumstances surrounding the making of the agreement . . . including the object, nature and subject matter of the writing . . . ' so that the court can 'place itself in the same situation in which the parties found themselves at the time of contracting.' [Citations.]" (*Id.* at p. 39-40 (emphasis added).) "If the court decides, *after* considering this evidence, that the language of a contract, in the light of all the circumstances, 'is fairly susceptible of either one of the two interpretations contended for . . . ' [Citations], extrinsic evidence relevant to prove either of such meanings is admissible." (*Pacific Gas, supra*, at p. 40 (emphasis added).)

In other words, "[t]he interpretation of a contract involves 'a two-step process: "First the court provisionally receives (without actually admitting) all credible evidence concerning the parties' intentions to determine 'ambiguity,' i.e., whether the language is 'reasonably susceptible' to the interpretation urged by a party. If in light of the extrinsic evidence the court decides the language is 'reasonably susceptible' to the interpretation urged, the extrinsic evidence is then admitted to aid in the second step—interpreting the contract. [Citation.]" ' " (*Wolf v. Superior Court* (2004) 114 Cal.App.4th 1343, 1351.)

In determining whether parol evidence is admissible, " '[d]ifferent standards of appellate review may be applicable . . . depending upon the context in which an issue arises. The trial court's ruling on the threshold determination of "ambiguity" (i.e., whether the proffered evidence is relevant to prove a meaning to which the language is reasonably susceptible) is a question of law, not of fact. [Citation.] Thus the threshold determination of ambiguity is subject to independent review. [Citation.]' " (*ASP Properties Group v. Fard, Inc.* (2005) 133 Cal.App.4th 1257, 1267.)

Here, the trial court properly followed the two-step process. First, it provisionally admitted the Church's parol evidence regarding the intention of the parties[9] at the time of executing the RUA. Second, it rejected the evidence as the contract was not reasonably susceptible of the interpretation offered by the Church. It is

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[9] In passing, the Church notes that the City was not the only entity requiring the RUA. The Church's lender would not have released its lien on the tower and allowed the subdivision to proceed without first approving an RUA which, in the lender's mind, satisfactorily protected the Church's remaining interest in the property. The Church's lender did, in fact, approve the RUA. As the lender was not a party to the RUA, the lender's understanding of the RUA is simply not relevant to determining the meaning of the contract.

not clear whether the Church is pursuing on appeal the argument that this second conclusion was erroneous. In any event, we conclude, on independent review, that the RUA is not reasonably susceptible of the Church's interpretation of first-come, first-served usage of 178 parking spaces, with the Church having the right to use all of those spaces on ten days' notice.

We repeat the key language of the RUA: "Church, the owner of Parcel B, and [the tower buyers] hereby agree to the reciprocal use of 178 parking spaces, the required parking spaces by the City of LA for Parcel A, so that if Church requires additional parking spaces for one of its functions or events, Church may have use of the available parking spaces belonging to Parcel A, provided that Church gives ten (10) days advance notice to [tower buyers] or its agent/facility operator. For such parking utilization, there shall be no additional cost to Church." First, the language of the RUA refers to the 178 spaces as "the required parking spaces by the City of LA for Parcel A," and again refers to those spaces as "belonging to Parcel A." There is simply no way this language is susceptible of the interpretation that the spaces, in fact, are to be shared by the parties on a first-come, first served basis. The evidence is clear that when the City requires the use of spaces for a particular building, it requires that those spaces be available "for the consistent and reliable use" of the building's tenants, and a first-come, first-served agreement would not satisfy this requirement. Secondly, the language states that, on advance notice, the Church may have use of "the available parking spaces belonging to Parcel A." The use of the word "available" here undermines the Church's interpretation that, on notice, the Church may have use of *all* of the parking spaces; "available" sets

a limit on the parking spaces the Church may use. Finally, we focus on the phrase "so that." The Church argued at trial that the phrase "reciprocal use" meant that the parties shared the parking on a first-come, first-served basis. Yet the RUA provided that the parties agreed "to the reciprocal use of 178 parking spaces . . . *so that* if Church requires additional parking spaces for one of its functions or events, Church may have use of the available parking spaces belonging to Parcel A, [on notice]." (Emphasis added.) In other words, the RUA did not provide for "reciprocal use" *in addition to* the Church's right to use available parking spaces on notice; the RUA *defined* "reciprocal use" *in terms of* the Church's right to use available parking spaces on notice. In short, the language of the RUA is not reasonably susceptible of the interpretation supported by the Church's extrinsic evidence, and the trial court was therefore correct to decline to consider that evidence.

2. *The Contract is Not So Ambiguous as to be Unenforceable*

On appeal, the Church argues for the first time that, if its parol evidence were properly considered, the conclusion follows that the contract is hopelessly ambiguous and therefore unenforceable. We disagree.

"Where a contract has but a single object, and such object is . . . so vaguely expressed as to be wholly unascertainable, the entire contract is void." (Civ. Code, § 1598.) The RUA does not meet this standard. The RUA's purpose is to affirm that the 178 spaces required by the City to be allocated to the tower are, in fact, allocated to the tower, and to further allow the Church to use those of the spaces not being used by

the tower on ten days notice.[10] While there is no doubt that the language of the RUA could have been better drafted, it is not so vague as to render the purpose of the RUA wholly unascertainable.

Indeed, in large part, the Church does not dispute the purpose of the RUA. In its briefing on appeal, the Church acknowledges that the purpose of the RUA was "to formalize an allocation of parking on the property that would meet [the] City's requirements." However, the Church also claims that "the original parties regarded the RUA as merely a device to appease the City, and that it was not intended to define actual parking rights." In other words, the Church takes the position that, although the RUA was signed and recorded in order to satisfy the City and obtain its approval of the subdivision (a result beneficial to the Church as it made possible the subdivision and sale of the tower), the Church and the tower buyer had an oral understanding *to not enforce the RUA according to its terms*. This is precisely the type of oral agreement the parol evidence rule was intended to bar. A party simply cannot attempt to vary the terms of a written agreement by parol evidence that it was never intended to be enforced

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[10] On appeal, the Church argues the word "available" is ambiguous. It states, "One might suppose that 'available' means unoccupied, but that makes little sense in terms of giving 'ten (10) days advance notice.' There is no way to predict, ten days ahead of time, that any parking space will be empty and hence 'available.' " We disagree. Upon giving notice to the tower owner that the Church will need to use additional parking for an event at a particular date and a particular time, the Church will *then* be able to use the tower's spaces on a first-come, first-served basis on that date and time. In other words, any space without a car in it at the designated time is "available."

according to its terms.[11] (*Nesbit v. MacDonald* (1928) 203 Cal. 219, 221-222; *Stevinson v. Joy* (1912) 164 Cal. 279, 280, 282.)

The RUA, however flawed, is not hopelessly ambiguous, nor is it reasonably susceptible to the interpretation offered by the Church. The trial court did not err in rejecting the Church's interpretation, and enforcing the RUA according to its language.

DISPOSITION

The judgment is affirmed. Tower owner is to recover its costs on appeal. The matter is remanded for a determination of the attorney fees to which tower owner may be entitled as prevailing party on the contract.

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CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J. ALDRICH, J.

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[11] In reply to tower owner's assertion that the Church is arguing that the RUA was, in fact, a fraud on the City, the Church responds that if the RUA was a fraud on the City, it should be declared void as a contract with an unlawful purpose. (Civ. Code, §§ 1598, 1608.) We disagree. If there is fraud upon the City here, it is not in the RUA, which wholly complies with the City's requirements, but in the alleged secret parol agreement to not enforce the RUA according to its terms regardless of the City's requirements.